

UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALLY CRUZ ROBERTO,

Defendant.

CRIMINAL CASE NO. 21-00019-3

ORDER

This matter comes before the Court on the Defendant's motion for a new trial (Dkt. No. 189), which the Court DENIES for the reasons explained herein.

Federal Rule of Criminal Procedure 33 allows this Court to grant a new trial "if the interest of justice so requires." This decision rests solely within this Court's discretion. *U.S. v. Love*, 535 F.2d 1152, 1157 (9th Cir. 1976). Here, Defendant asserts that a new trial is warranted because of the Court's dismissal of prospective jurors on the basis of their COVID-19 vaccination status. (Dkt. No. 189 at 2.) Defendant asserts those persons may have constituted a sufficiently distinctive group that their dismissal resulted in structural error. (*Id.* at 6.)

Defendant points the Court to no cases supporting the proposition that such persons are, in fact, a distinctive group, as there are many reasons driving an individual's decision regarding COVID-19 vaccination. (*See generally* Dkt. No. 189.) Moreover, the Court is aware of no such cases. Instead, to the extent this Court can divine, all courts that have addressed the issue have

1 found that such persons *do not* constitute a distinct group. *See, e.g., U.S. v. Nelson*, 2022 WL
2 1093661, slip op. (N.D. Cal. 2022); *Joffe v. King & Spalding LLP*, 575 F. Supp. 3d 427, 434
3 (S.D.N.Y. 2021). And the Court sees no reason to depart from these rulings here.

4 Accordingly, Defendant's motion for a new trial (Dkt. No. 189) is DENIED.

5 DATED this 17th day of February 2023.

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9 John C. Coughenour
10 UNITED STATES DISTRICT JUDGE
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